91-1870

Supreme Court, U.S.
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No. _____

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1991

Docket No. 90-70 of the
Circuit Court of
Westmoreland County,
Virginia

CHARLES HERSHFIELD, Petitioner, pro se

v.

TOWN OF COLONIAL BEACH, Respondent

APPEAL FROM THE SUPREME COURT OF VIRGINIA

PETITION FOR WRIT OF CERTIORARI

CHARLES HERSHFIELD
POB 934
Dahlgren, VA 22448
703-663-2903

QUESTIONS PRESENTED

1. Did the Supreme Court of Virginia violate the Petitioner's Constitutional rights by concluding that the specific pointing out of an error committed by the trial court judge was not an "assignment of error"?

2. Did the Supreme Court of Virginia violate the Petitioner's Constitutional rights by failing to take any action on a Motion to Quash the original complaint brought in this case?

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CONTENT OF THE PETITION

(a) The questions presented are set forth on the first page following the cover.

(b) Names of all parties in caption.

(c) The Petition does not exceed five pages.

(d) The Order of the Westmoreland County, Virginia, Circuit Court, the Denial of the Petition for Appeal, and the Denial of the Petition for Rehearing are included in the Appendix.

(e) The date of the Circuit Court Order is 16 May 91, the date of the Denial of the Petition for Appeal is 22 Nov 81, and the date of the Denial of the Petition for Rehearing is 10 Jan 92. In the U. S. Supreme Court Rule 10.1(a), reference is made to a decision which "... has so far departed from the accepted and usual course of judicial

proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's power of supervision". The Petitioner clearly, as on page 9, line 19, of the 2 Apr 91 official transcript of the hearing, a part of the record, tells the trial court judge that "The Court has no jurisdiction." Yet the trial court judge continues on as if he does have jurisdiction over the person of the Petitioner. In his Petition for Appeal, the Petitioner points this out as an error, yet the Supreme Court of Virginia dismisses the appeal for the reason of no assignment of error. This is not the "accepted and usual course of judicial proceedings". And secondly, the Supreme Court of Virginia did not even take, nor has ever taken, any action on a Motion to Quash filed over one month previous to

the Petition for Appeal. Following Rule 1:1 in the Annotated Rules of the Supreme Ct. of Va., we have "Judgments that are void may be attacked in any court at any time, ... ". Rook v. Rook, 233 Va. 92, 353 S.E.2d 756 (1987). Again, this lack of response is not the "accepted and usual course of judicial proceedings". By authority of the Constitution, the Supreme Court is the fundamental law of the land, and as such has conferred upon it the jurisdiction to review the judgment or decree in question.

(f) The Constitutional provisions are:
(1) Amendment V, "No person shall ... be deprived of life, liberty, or property, without due process of law ...".
(2) Section 1. of Amendment XIV, " ... nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person

within its jurisdiction the equal protection of the laws."

(3) Amendment I, "Congress shall make no law ... abridging ... the right of the people ... to petition the government for a redress of grievances." Redress of grievances is referred to as "the right of the people".

The Colonial Beach town ordinance involved is Sec. 15-13, with a copy included in the 12 Aug 91 Motion to Quash, where it is shown that the ordinance specifies fifteen days notice, while the Petitioner was given only six days notice.

(g) Concise statement of the case. The Petition for Appeal was denied for lack of assignment of error, in spite of the fact that the record shows that at least one error was clearly pointed out. The 12 Aug 91 Motion to Quash was never

acted upon. The Petitioner has been deprived of his Constitutional rights.

(h) In regard to the 12 Aug 91 Motion to Quash, the Petitioner shows that the notice was not valid, and so any judgment resulting from such fatally defective notice is void, and according to Rook v. Rook, judgments that are void may be attacked in any court at any time. The denial of the Petition for Appeal raises federal questions which have first opportunity to be heard at this time.

(i) Not a court of appeals review.

(j) The Motion to Quash is unanswered. The Petition for Appeal is denied. This result " ... has so far departed from the accepted and usual course of judicial proceedings ... ". Rule 10.1.(a). The Petitioner is pro se, so perhaps some allowance could be made when considering this Petition. Respectfully submitted,

Charles Hirschfield

APPENDIX

(1) The Order of the Westmoreland County, Virginia, Circuit Court.

VIRGINIA: IN THE CIRCUIT COURT OF WESTMORELAND COUNTY

TOWN OF COLONIAL BEACH, VIRGINIA vs.

CHARLES HERSHFIELD, Defendant

ORDER On the 2nd day of April, 1991, came the parties upon a MOTION TO DISMISS CHARGES filed by Charles Hershfield on March 28, 1991, and upon an appeal of the order the Town Counsel of the Town of Colonial Beach by Charles Hershfield; evidence was presented to the Court ore tenus, and was argued by Charles Hershfield, pro se, and G. Alexander Weimer, Jr., Town Attorney.

It appearing to the Court that the Motion to Dismiss Charges is without merit, the petitioner admitting in argument and in evidence that he had been provided with a

copy of the applicable ordinance; and it appearing to the Court that the determination of the town counsel was correct and proper, and that Mr. Hershfield should remove or abate the conditions which constitute a nuisance on his property in the Town of Colonial Beach, it is therefore

ADJUDGED AND ORDERED that the Motion of Charles Hershfield dated March 28, 1991, is hereby overruled, and the determination of the Town of Colonial Beach is hereby affirmed and Mr. Hershfield's appeal of said determination is hereby overruled. The decision of the Town of Colonial Beach is hereby found to be correct and proper and Mr. Hershfield's appeal of the town's determination is hereby dismissed; it is further

ORDERED that Mr. Hershfield comply with

the decision of the Town of Colonial Beach dated September 3, 1990 requiring Mr. Hershfield to: 1. Cut all weeds, grasses and ivy over eight inches (8') tall. 2. Remove the following items from the property; (a) the old storm door leaning against the building (b) old plywood (rotted out) leaning against tree (c) old pile of logs on ground and old fence posts (d) two old rusty chairs tied to a log (e) five gallion can, barbecue cover (f) old storm window against tree (g) old rotted table with junk metel and old air conditioner on top (h) old rusted gutter on top of trailer (i) dead limbs from trees (j) rusty trash can setting on metel cabinet cover (k) bricks and blocks (l) antique Volkswagon with antique tags and no town sticker (m) one other automobile with no town sticker and Virginia license plates

which expired on July 31, 1990 (n) water hose leaking water into a pan from town water system (o) ivy that covers house

within thirty (30) days of the date of this Order. And; it is further

ORDERED that should Mr. Hershfield appeal this matter that an Appeal Bond in tha amount of $1000.00 shall be required to be posted in order to perfect this appeal. ENTER: LAW 16th day of May, 1991 (Signed) Joseph E. Spruill, Jr. JUDGE

I ask for this: (Initials) GAW

G. Alexander Weimer, Jr. Town Attorney Town of Colonial Beach 610 W. Richmond Road P. O. Box 547 Warsaw, VA 22572

Seen and Excepted: (No Signature) Charles Hershfield A TRUE COPY TESTE (Signed) Gwynne J. Chatham Deputy Clerk

OBJECTIONS TO ORDER

Seen and excepted to, with the 3

exceptions to be entered into the record as listed on these 2 attached pages.
(Signed) Charles Hershfield 16 May 91

1. Motion to quash omitted.

There was indeed a Motion to Dismiss Charges dated 28 Mar 91, but there was also an oral Motion to Quash the Complaint presented in court on 2 Apr 91, that motion having the same grounds as the written motion dated 28 Mar 91. The Court overruled the motion to quash or dismiss, based upon the assumption that personal service was made on June 5th. After the petitioner stated that it is false that personal service was made on June 5th, the Court said "If it proves to be false, then I will reconsider my ruling." The Town never presented any evidence of service of process on June 5th, and so the Court should have reconsidered its ruling. The fact that

the Town Manager had the paper served on 26 Jul 90 by a deputy sheriff is quite clear evidence that any alleged previous attempt to serve process was not successful.

2. Applicable ordinance not known previous to town council hearing.

It is stated that "... the petitioner admitting in argument and in evidence that he had been provided with a copy of the applicable ordinance ...". The petitioner never in any way stated that he had been served as required by town ordinance Section 15-13(a), "in the manner provided by law for service of legal process", a copy of the applicable ordinance. In fact, the so-called notice does not even state a cause of action, so a defendant could not know which ordinance is applicable and which is not.

3. Proposed Order greatly exceeds

requirements found in paper served by Town Manager.

The position of the petitioner is that both the Town Council and the Court lack jurisdiction over the person of the petitioner, for grounds stated in the various motions. However, another exception to the proposed Order is that number 2., Remove the following items from the property; (a) through (n), are not even referred to in the so-called complaint or notice. The only alleged complaints of a condition or alleged nuisance referred to a concern about "overgrown conditions," and even that is restricted to "excessive brush and weeds". Any additional requirements are another violation of Due Process of Law, because Section 15-14 of the Town Code provides that a hearing be held, and "At such hearing, such owner or occupant

may appear and show cause, if any he can, why the condition or nuisance should not be abated, remove or obviated." The petitioner has had no such opportunity to prepare and to make appearance before the Town Council concerning number 2, (a) through (n). And concerning number 2. (o), the Town Council did not ask for removal of ivy from the wall of the home itself, according to the alleged Resolution made on 13 Sep 90, and which was not provided to the petitioner until after the trial in circuit court on 2 Apr 91.

(2) The Denial of the Petition for Appeal.

VIRGINIA: In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Friday the 22nd day of November, 1991. Charles Hershfield, Appellant, against

Town of Colonial Beach, Appellee. Record No. 911561, Circuit Court No. 90-70. From the Circuit Court of Westmoreland County.

Finding that the appeal was not perfected in the manner provided by law in that the petition for appeal fails to include assignments of erroe as required by Rule 5:17(c), as amended effective July 1, 1991, the Court dismisses the petition for appeal filed in the above-styled case. A copy, Teste: David B. Beach, Clerk By: (Signed) Deputy Clerk

(3) The Denial of the Petition for Rehearing.

VIRGINIA: In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Friday the 10th day of January, 1992. Charles Hershfield, Appellant, against

Town of Colonial Beach, Apellee.

Record No. 911561, Circuit Court No. 90-70.

Upon a Petition for Rehearing.

On consideration of the petition of the appellant to set aside the judgment rendered herein on the 22nd day of November, 1991, and grant a rehearing thereof, the prayer of the said petition is denied. A Copy, Teste:

(Signed) David B. Beach, Clerk